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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GS HOLISTIC, LLC,
Plaintiff,

v.

PUFF+ LLC d/b/a PUFF SMOKE
SHOP and HAMEEDULLAH
NOORISTANI,
Defendants,

No. 2:22-cv-02035-DAD-DB

**MOTION FOR DEFAULT FINAL
JUDGMENT AGAINST ALL
DEFENDANTS**

Date: October 27, 2023

Time: 10:00 a.m.

Location: 501 I Street, Courtroom
27, 4th Floor, Sacramento,
CA 95814

Date Action Filed: August 23, 2023

Pursuant to Federal Rule 55(b)(2), the Plaintiff, GS HOLISTIC, LLC, moves this Court for entry of default judgment against Defendants, PUFF+ LLC d/b/a PUFF SMOKE SHOP and HAMEEDULLAH NOORISTANI, in this action. The Defendants were served with the summons and Complaint but failed to file an answer or otherwise defend in this lawsuit. The Plaintiff now requests that this Court enter the attached proposed Default Judgment and Order for Other Equitable Relief, and Civil Money Penalties (“Default Judgment”). The Default Judgment award

1 includes Statutory Damages of \$150,000, and Costs in the amount of \$920.24 to be
2 imposed against the Defendants.

3 4 **I. PRELIMINARY STATEMENT**

5 As a result of Defendants' failure to appear in this action and the subsequent
6 entry of default against them, the material factual allegations set forth in the
7 Plaintiff's Complaint must be accepted as true. Those allegations establish all of the
8 necessary elements of the Plaintiff's claims for (i) willful trademark infringement of
9 the Stündenglass trademarks in violation of 15 U.S.C. §§ 1114; (ii) trademark
10 counterfeiting of the Stündenglass trademarks in violation of 15 U.S.C. §§ 1116(d);
11 and (iii) willful trademark infringement (false designation) in violation of 15 U.S.C.
12 § 1125(a).

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16 On the facts presented, it is also appropriate for the Court to grant the Plaintiff
17 all relief requested in this motion, namely:

- 18
19 a. Statutory damages for willful trademark counterfeiting pursuant
20 to 15 U.S.C. § 1117(c) in the amount of \$150,000 (\$50,000 per mark);
21 and
22 b. Costs in the amount of \$920.24.

23 In sum, the Plaintiff seeks an award of statutory damages for Defendants'
24 willful conduct, and an award of the Plaintiff's costs.

25 **II. STATEMENT OF FACT**

- 26 a. The "STÜNDENGLASS" Trademarks and Plaintiff's Business.

27 For approximately two years, the Plaintiff has worked to distinguish the
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1 Stündenglass brand as the premier manufacturer of glass infusers by emphasizing
2 the brand's unwavering use of quality materials and focusing on scientific principles
3 which facilitate a superior smoking experience. Compl. ¶ 9. Stündenglass branded
4 products embody a painstaking attention to detail, which is evident in many facets
5 of authentic Stündenglass branded products. Compl. ¶ 9. It is precisely because of
6 the unyielding quest for quality and unsurpassed innovation that Stündenglass
7 branded products have a significant following and appreciation amongst consumers
8 in the United States and internationally. Compl. ¶ 9.

11 As a result of the continuous and extensive use of the trademark
12 "STÜNDENGLASS," GS was granted both valid and subsisting federal statutory
13 and common law rights to the Stündenglass trademark. Compl. ¶ 10

16 The Plaintiff has used the Stündenglass Marks in commerce throughout the
17 United States, continuously, since 2020, in connection with the manufacturing of
18 glass infusers and accessories. Compl. ¶ 13.

20 The Stündenglass Marks are distinctive to both the consuming public and the
21 Plaintiff's trade. GS's Stündenglass branded products are made from superior
22 materials. The superiority of Stündenglass branded products is not only readily
23 apparent to consumers, but to industry professionals as well. Compl. ¶ 14.

25 The Stündenglass Trademarks are exclusive to GS and appear clearly on GS's
26 Stündenglass Products, as well as on the packaging and advertisements related to the
27 products. Compl. ¶ 15. GS has expended substantial time, money, and other
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1 resources in developing, advertising, and otherwise promoting and protecting these
2 Trademarks. Compl. ¶ 15. As a result, products bearing GS's Stündenglass
3 Trademarks are widely recognized and exclusively associated by consumers, the
4 public, and the trade as being high-quality products sourced from GS. Compl. ¶ 15.

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6 GS's Stündenglass Products have become some of the most popular of their
7 kind in the world and have also been the subject of extensive unsolicited publicity
8 resulting from their high-quality and innovative designs. Compl. ¶ 16. Because of
9 these and other factors, the GS brand, the Stündenglass brand, and GS's
10 Stündenglass Trademarks are famous throughout the United States. Compl. ¶ 16.

11
12 Since 2020, GS has worked to build significant goodwill in the Stündenglass
13 brand in the United States. GS has spent substantial time, money, and effort in
14 developing consumer recognition and awareness of the Stündenglass brand, via
15 point of purchase materials, displays, through their websites, attending industry trade
16 shows, and through social media promotion. Compl. ¶ 17.

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18 In fact, the Stündenglass Products have been praised and recognized by
19 numerous online publications, as well as publications directed to the general public.
20 Compl. ¶ 18.

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22 At the time of this Complaint, the Plaintiff was the owner of federally
23 registered and common law trademarks. The following is a list of the Stündenglass
24 trademarks:

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28 a. U.S. Trademark Registration Number 6,633,884 for the standard

1 character mark “Stündenglass” in association with goods further identified in
2 registration in international class 011.

3 b. U.S. Trademark Registration Number 6,174,292 for the design
4 plus words mark “S” and its logo in association with goods further identified
5 in the registration in international class 034.

6 c. U.S. Trademark Registration Number 6,174,291 for the standard
7 character mark “Stündenglass” in association with goods further identified in
8 registration in international class 034.

9 b. The Stündenglass marks are Counterfeiting Target.

10 GS sells its products under the Stündenglass Marks to authorized stores in the
11 United States, including in California. GS has approximately 3,000 authorized
12 stores in the United States selling its products. As such, Stündenglass branded
13 products reach a vast array of consumers throughout the country. Compl. ¶ 20.

14 It is because of the recognized quality and innovation associated with the
15 Stündenglass Marks that consumers are willing to pay higher prices for genuine
16 Stündenglass products. For example, a Stündenglass brand glass infuser is priced at
17 \$599.95, while a non-Stündenglass branded product is also being sold for up to \$600,
18 with a range of \$199 to \$600. Compl. ¶ 21.

19 Defendants’ Infringing Conduct and Failure to Litigate.

20 The Defendants have engaged in continuous and systematic business in
21 California and derive substantial revenue from commercial activities in California.
22 Specifically, the Defendants have engaged in the unlawful manufacture, retail sale,
23 and/or wholesale sales of counterfeit Stündenglass branded glass infusers and related
24 parts. Compl. ¶ 6.
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1 The Defendants have sold goods with marks allegedly with Trademarks
2 registered to the Plaintiff. Compl. ¶ 25-26. The Defendants' acts constitute willful
3 trademark infringement. Compl. ¶ 43. The Defendants' infringing acts as alleged
4 herein have caused and are likely to cause confusion, mistake, and deception among
5 the relevant consuming public as to the source or origin of the Counterfeit Goods
6 sold by the Defendants. Compl. ¶ 42-43.
7

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9 The Defendants have failed to respond to the Complaint or otherwise appear
10 in this action.
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12 **III. LEGAL STANDARDS**

13 Federal Rule of Civil Procedure 55(b)(2) authorizes a court to enter a default
14 judgment against properly served Defendants who fail to file a timely responsive
15 pleading. By such a default, all of the Plaintiff's well-pled allegations in the
16 Complaint are deemed admitted. *See Assurance Co. of Am. v. MDF Framing, Inc.*,
17 2008 U.S. Dist. LEXIS 9865, at *7 (9th Cir. 2008). "A party's default conclusively
18 establishes that party's liability although it does not establish the amount of
19 damages" *Dillard v. Victoria M. Morton Enters.*, 2011 U.S. Dist. LEXIS 11134 at
20 *13 (9th Cir. 2011). In determining damages, an evidentiary hearing is not required,
21 instead, the Court may rely on the declarations submitted by the Plaintiff. *See Philip*
22 *Morris U.S.A. Inc. v. Castworld Prods.*, 219 F.R.D. 494 (9th Cir. 2003) at *498.
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25 **IV. ARGUMENT**

26 a. A Default Judgment Should Be Awarded Against the Defendants.
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1 The relevant factors which courts may consider when entering default
2 judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits of
3 plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of
4 money at stake in the action; (5) the possibility of a dispute concerning material
5 facts; (6) whether the default was due to excusable neglect, and (7) the strong policy
6 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.
7
8 *Eitel v. McCool*, 782 F.2d 1470, 1471-1472 (9th Cir. 1986) (*citing 6 Moore's*
9 *Federal Practice* para. 55-05[2], at 55-24 to 55-26). The Plaintiff filed its Complaint
10 on November 9, 2022 [DE 1]. Plaintiff's Complaint highlights clear and detailed
11 evidence which would be sufficient to seek relief based on trademark infringement
12 of its Stundenglass marks had the case been adjudicated on the merits. Defendants,
13 in failing to respond to the Complaint or otherwise appear in this instant action, have
14 chosen not to contest any of the claims and underlying facts provided for in the
15 pleadings. Defendants' complete absence in this case indicates a lack of excusable
16 neglect, and without a default judgment, Plaintiff cannot continue to litigate this case
17 on the merits. As such, if default judgment is not granted, the Plaintiff will be left
18 with no recourse for its injuries to its reputation and business caused by the
19 Defendants' illegal counterfeiting activities. Such an outcome would be unfairly
20 prejudicial to the Plaintiff. As such, the factors set forth in *Eitel* weigh in favor of
21 entering default judgment, and this Court should grant this motion and enter a default
22 judgment against the Defendants.
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1 b. Plaintiff is Entitled to Statutory Damages.

2 To prevail on a trademark infringement claim under 15 U.S.C. § 1114, a
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4 Plaintiff must prove that a Defendant used, without the consent of the registrant, “in
5 commerce any reproduction, counterfeit, copy, or colorable imitation of a registered
6 mark: which is likely to cause confusion, or to cause mistake, or to deceive.” The
7
8 Plaintiff must demonstrate “(1) that it had prior rights to the mark at issue and (2)
9 that the Defendants had adopted a mark or name that was the same, or confusingly
10 similar to its mark, such that consumers were likely to confuse the two.” As stated
11
12 in *Century 21 Real Estate Corp. v. Sandlin*, 846 F.2d 1175 at *1178 (9th Cir. 1988)
13 “A claim of federal trademark infringement may be brought against any person who
14 shall, without consent of the holder of the registered trademark: use in commerce
15 any reproduction, counterfeit, copy, or colorable imitation of a registered mark in
16 connection with the sale, offering for sale, distribution, or advertising of any goods
17 or services on or in connection with which such use is likely to cause confusion, or
18 to cause mistake, or to deceive . . .” The Court in *136 Collins Ave. v. V.*, 2006 U.S.
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20 Dist. LEXIS 113130 at *6 (9th Cir. 2006) refers to the eight factor test first
21 established by the Ninth Circuit Court in *AMF, Inc. v. Sleekcraft Boats*, 599 F.2d
22 341, 348-49 (9th Cir. 1979) (abrogated in part on other grounds by *Mattel, Inc. v.*
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24 *Walking Mountain Prod.*, 353 F.3d 792 (9th Cir. 2003)) To determine whether a
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26 “likelihood of confusion” exists between the parties allegedly related services. The
27
28 eight-factor test includes: strength of the mark; relatedness of the goods or services;

1 similarity of the marks; evidence of actual confusion; marketing channels used; the
2 degree of care likely to be exercised by the purchaser; defendant's intent in selecting
3 the mark; and likelihood of expansion into other markets.
4

5 The Plaintiff is the owner of the Stündenglass Trademarks and these are
6 exclusive to the Plaintiff. The Defendants do not have the Plaintiff's consent to sell
7 products that are not genuine Stündenglass goods. The Plaintiff has been damaged
8 by Defendants' acts because those acts were committed with the intent to trade on
9 the goodwill of the Stündenglass Marks, cause confusion and deception in the
10 marketplace, and divert potential sales of the Plaintiff's vaporizers to the
11 Defendants. As for the Defendants' sale of counterfeiting goods, the Plaintiff
12 specifically points to three (3) of the Plaintiff's marks: (1) U.S. Trademark
13 Registration Number 6,633,884 for the standard character mark "Stündenglass" in
14 association with goods further identified in registration in international class 011,
15 (2)U.S. Trademark Registration Number 6,174,292 for the design plus words mark
16 "S" and its logo in association with goods further identified in the registration in
17 international class 034, and (3) U.S. Trademark Registration Number 6,174,291 for
18 the standard character mark "Stündenglass" in association with goods further
19 identified in registration in international class 034.
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25 The Plaintiff further alleges that the Defendants have sold in commerce
26 Counterfeit Goods using reproductions, counterfeits, copies and/or colorable
27 imitations of Stündenglass Marks. In fact, the Defendants did sell a glass infuser
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1 with three (3) fake Stündenglass Marks, which is in fact a counterfeit product. The
2 glass infuser, which donned the alleged Trademarks, was sold for a profit in the
3 ordinary stream of commerce. The Defendants used images and names identical to
4 or confusingly similar to the Stündenglass Marks, to confuse customers and aid in
5 the promotion and sales of Counterfeit Goods under the Infringing Marks. The
6 Defendants' use of the Stündenglass Marks includes importing, advertising,
7 displaying, distributing, selling, and/or offering for sale unauthorized copies of
8 Stündenglass branded products. The Defendants' offering to sell, selling, importing
9 and encouraging others to import Counterfeit Goods bearing the Infringing Marks
10 in this manner was and is likely to cause confusion or to cause mistake and/or
11 deceive consumers who purchase the Counterfeit Goods.
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14 The Defendants' acts constitute willful trademark infringement in violation of
15 Section 32 of the Lanham Act, 15 U.S.C. § 1114. Moreover, it constitutes false
16 designation of origin which is likely to cause confusion and mistake as it will deceive
17 consumers as to the source or origin of such goods or sponsorship or approval of
18 such goods by the Plaintiff. As a result, the elements described by the court have
19 been satisfied and statutory damages must be awarded.
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22 The Lanham Act, 15 U.S.C. § 1117(c), provides, in pertinent part:
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25 In a case involving the use of a counterfeit mark (as
26 defined in section 1116(d) of this title) in connection with
27 the sale, offering for sale, or distribution of goods or
28 services, the plaintiff may elect, at any time before final
judgment is rendered by the trial court, to recover, instead

of actual damages and profits under subsection (a) of this section, an award of statutory damages for any such use in connection with the sale, offering for sale, or distribution of goods or services in the amount of —(1) not less than \$1,000 or more than \$200,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just; or(2) if the court finds that the use of the counterfeit mark was willful, not more than \$2,000,000 per counterfeit mark per type of goods or services sold, offered for sale, or distributed, as the court considers just. (Emphasis added)

“A plaintiff who proves a violation of a registered trademark is entitled to recover its profits and any damages sustained. 15 U.S.C. § 1117(a). According to 15 U.S.C. § 1117(b), "in a case involving use of a counterfeit mark . . . the court shall, unless the court finds extenuating circumstances, enter judgment for three times such profits or damages, whichever amount is greater. . . .” See *Mophie, Inc. v. Shah*, 2015 U.S. Dist. LEXIS 186868 (C.D. Cal. Feb. 9, 2015). Because the Defendants have refused to cooperate, as indicated through the failure to obtain counsel, and continue the litigation, it is not possible for the Plaintiff to establish exact damages with certainty. While the Defendants probably have not sold millions of counterfeit products, it has engaged in the purchase and sale of counterfeits of at least one unit, and likely traded in more.

While actual damages to the Plaintiff may not be calculated with exact certainty, an assessment of damages has been completed by Plaintiff, GS HOLISTIC, LLC. See *Folkerts Aff. as to Value of Damages*; see also *Folkerts Aff. as to Damages*. GS HOLISTIC, LLC Owner, Chris Folkerts, states that the Plaintiff

1 is seeking only a fraction of the actual losses to its business and that damages of
2 \$150,000.00 are reasonable since the actual damages to the business are far in excess
3 of this amount. Folkerts Aff. as to Value of Damages ¶¶ 8,9, 15.

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5 Further, in *Weaver v. Burger King Corp. (In re Weaver)*, 219 B.R. 890 (9th
6 Cir. 1998), the Court states, “the case law of this Circuit makes clear that courts are
7 vested with considerable equitable discretion in determining measure of damages
8 for trademark infringement.” *See Ramada Inns, Inc. v. Gadsden Motel Co.*, the
9 Eleventh Circuit Court of Appeals held:
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12 'Great latitude is given the trial judge in awarding
13 damages, and his judgment will not be set aside unless the
14 award is clearly inadequate.' *Drake v. E.I. DuPont de*
15 *Nemours and Company*, 432 F.2d 276, 279 (5th Cir.1970).
16 This is especially true of an award fashioned pursuant to
17 the Lanham Act which expressly confers upon district
18 judges wide discretion in determining a just amount of
19 recovery for trademark infringement. *See* 15 U.S.C. §
20 1117.

21 804 F.2d 1562, 1564-65 (11th Cir. 1986) (quoting *Holiday Inns, Inc. v. Alberding*,
22 683 F.2d 931 (5th Cir.1982)). Based on the discretion this Court is given in Lanham
23 Act cases such as this, the damages assessment of GS HOLISTIC, LLC, an award
24 of \$150,000.00 (\$50,000 per Mark) is the appropriate amount of statutory damages
25 that is well within the discretion of the Court to award. This amount not only reflects
26 actual damages suffered by the Plaintiff, but also sends an unequivocal message to
27 the industry that counterfeiting will not be tolerated, nor will misrepresentations or
28 otherwise refusing to cooperate with discovery demands (even if informally

presented). Here, the Defendants have infringed on three of the Plaintiff's trademarks with the Registration Numbers 6,633,884, 6,174,292 and 6,174,291, justifying \$150,000.00 in statutory damages.

c. Plaintiff is Entitled to Costs of the Litigation.

Pursuant to 15 U.S.C. § 1117, the Plaintiff is entitled to recover the costs of the action. *See* 15 U.S.C. § 1117. The Plaintiff requests that this Court award costs in the total amount of \$920.24 consisting of the filing fee (\$402.00), the process server fee (\$130), and Plaintiff's investigation fees (\$388.24). *See* Aff. Supp. Final Default J. ¶ 6.

V. CONCLUSION

Given the foregoing, this Court should grant Plaintiffs' motion in its entirety.

/s/ Tomas Carlos Leon.
Tomas Carlos Leon

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 23, 2023, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF to serve on all counsel of record.

/s/ Tomas Carlos Leon.
Tomas Carlos Leon
CA Bar #321117
Leon Law LLP

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